IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.95 OF 2005

Shailesh M.Palsuledesai & Anr. ...Petitioners.

Vs.

The Principal J.M.Patel College

of Commerce & Ors. ...Respondents.

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Mr.Mihir Desai for the Petitioners.

Mr.V.J.Brahmbhatt for Respondent Nos.1 & 2.

Mr.P.M.Palshikar for Respondent No.3.

Mr.L.Satelkar, AGP for Respondent No.4.

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CORAM : DR.D.Y.CHANDRACHUD, J.

February 16, 2005.

P.C. :

1. Rule. Counsel appearing on behalf of the Respondents waive service. By consent taken up for hearing and final disposal.

2. The Petitioners have moved these proceedings in order to challenge an order dated 19th November

2004 passed by the Presiding Officer of the Mumbai University and College Tribunal. The First Petitioner was appointed as a Lecturer in Accountancy on 11th September 1996 and the Second Petitioner was appointed as a Lecturer in Economics on a Part-Time basis from 29th August 1996. Both the posts were reserved for candidates belonging to the Backward Classes.

3. On 20th October 1997, the Petitioners were once again selected for appointment by a duly constituted Selection Committee since the College was not able to obtain suitable candidates belonging to the Backward Classes. The appointments of the Petitioners were on a temporary basis and were continued from time to time with the approval of the University. The approval of the University was granted subject to the condition that the Petitioners would pass the NET/SET Examination. In the petition, it has been stated that every year the posts were advertised in order to enable suitable candidates from the Backward Classes to apply, but no candidate was forthcoming. This position continued from 1996-97 till 2000-2001.

4. On 24th March 2001, the Petitioners were issued

letters of termination on the ground that the University had by its order dated 8th January 2001 communicated its non-approval to the appointments of seven teachers including the Petitioners. The Petitioners thereupon moved appeals before the University and College Tribunal. The Tribunal by its order dated 24th October 2001, set aside the disapproval by the University and directed that the appointments shall continue in terms of the Government Resolution dated 18th October 2000. The Tribunal noted that under the aforesaid G.R.,the absence of the NET/SET qualification would not lead to a termination of the teacher concerned, save and except that the teacher is required to complete the qualification by 21st December 2003 failing which he would lose the placement benefit. Similar orders were passed by the Tribunal in the case of both the Petitioners on 24th October 2001.

5. The Petitioners continued to be in service of the J.M.Patel College of Commerce whose Principal is the First Respondent and the Second Respondent is the Secretary of the Trust which conducts the College. The services of the Petitioners were again terminated on 21st March 2002 and once again they were constrained to move the Tribunal. By its judgment and order dated 3rd July 2002, the

Tribunal quashed and set aside the order of termination. The First Petitioner was directed to be reinstated in the post held by him as a Full-Time Lecturer without break in service and with his back wages. In so far as the Second Petitioner is concerned, the University was directed to grant approval to his appointment for the year 2001-2002. The Joint Director of Higher Education was directed to reimburse the First and Second Respondents in respect of the salary of the Petitioners. These orders were complied with. The Second Petitioner while being allowed to join duties for the academic year 2002-03 was shown not as Part-Time, but was shown on clock hour basis. He thereupon filed an appeal before the Tribunal. The Tribunal allowed the appeal by its order dated 4th February 2003 and directed the College to reinstate the aforesaid Petitioner to the post held by him as a Part-Time Lecturer without any break in service and with back wages. The University was directed to grant its approval to the appointment of the Second Petitioner during the academic year 2002-03.

6. On 27th March 2003, the First and Second Respondents informed the Petitioners that the University has still not given its approval and the

process of dereservation of the posts against which the Petitioners were appointed, was not complete. In these circumstances, the services of the Petitioners were terminated with effect from 30th April 2003. The appeals which were then filed before the Tribunal were withdrawn on a statement by the First Respondent that the Petitioners would be issued fresh appointment orders for the academic year 2003-04 and that back wages would also be paid. Once again on 29th March 2004, the services of the Petitioners were terminated following which, the Petitioners moved the Tribunal. The order of termination was stayed on 29th April 2004. By a common judgment and order dated 19th November 2004, the Tribunal dismissed the appeals. The Tribunal has held that in so far as the possession of the NET/SET qualification is concerned, the Petitioners would be protected in terms of the decision of this Court rendered on 2nd April 2004 in Writ Petition No.2651 of 2002. However, the Tribunal was of the view that this will still not further the case of the Petitioners because they were appointed against reserved posts and there was no resolution or circular under which the Petitioners could be continued in service until the question of dereservation was decided by the Government.

7. At the hearing of this petition, the Court has been informed that in terms of Government Resolution dated 5th December 1994, a proposal was forwarded by the First and Second Respondents to the University for dereservation of the post held by the First Petitioner and that a proposal has in turn been forwarded by the University to the State Government. In so far as the post held by the Second Petitioner is concerned, Counsel appearing on behalf of the University states that no proposal has been received. The First and Second Respondents stated before the Court that they would forward to the University, a proposal for dereservation of the post held by the Second Petitioner, in any event within eight weeks from today, after due completion of necessary formalities.

8. In so far as the proposal that relates to the First Petitioner is concerned, Government is directed to take necessary steps in accordance with law in terms of its G.R. dated 5th December 1994 within a period of three months. In so far as the Second Petitioner is concerned, the First and Second Respondents shall forward their proposal to the University within a period of eight weeks. The University shall, upon receiving the proposal, take

necessary steps for considering the matter in accordance with law and for forwarding its proposal, in turn, with recommendations, to the State Government within a period of eight weeks thereafter. Upon receipt of the proposal, Government will take a decision in terms of its G.R. dated 5th December 1994 within a period of three months after the receipt of the proposal. The Petitioners will continue in service in the meantime. There shall accordingly be a direction to the effect that until the respective proposals are duly considered by the Government and final orders passed thereon, the services of the Petitioners shall not be disturbed on the ground that the Government is still to accede to the request for dereservation. The petition is accordingly disposed of. No order as to costs.

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